

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

INCREDIBLE INVESTMENTS LIMITED,

Plaintiff,

DECISION AND ORDER

v.

09-CV-576S

FRANK PARLATO, JR., et al.,

Defendants.

1. Plaintiff Incredible Investments Limited (“IIL”) has submitted two *ex parte* motions to the Court: a Motion for an *Ex Parte* Order of Attachment, brought under Federal Rule of Civil Procedure 64 and New York Civil Practice Law and Rules § 6201, and a Motion for an Expedited *Ex Parte* Hearing on its Motion for an *Ex Parte* Order of Attachment, under Fed. R. Civ. P. 6(d)¹ and Local Rule of Civil Procedure 7.1(d).
2. IIL is seeking an order of attachment against the property of Defendants Frank Parlato, Jr. (“Parlato”) and Whitestar Development Corporation (“Whitestar”).² (Bloom Decl. ¶ 11.)
3. IIL’s counsel refers to another case pending in this Court, Altissima Limited v. One

¹ Rule 6(d) is not applicable to the relief requested, and the Court will treat this motion as having been brought pursuant to Local Rule 7.1(d) only.

² In support of its *ex parte* motion, IIL has submitted the Declaration of Eric Bloom, Esq., with Exhibits A-C, dated August 5, 2009; Declaration of Shmuel Shmueli, dated August 5, 2009; Affidavit of Kelly G. Besaw, with Exhibits 1-2, dated August 4, 2009; Affidavit of William P. Zenosky, dated August 4, 2009; Affidavit of Rita C. Marino-Weiler, dated August 5, 2009; and a Memorandum of Law. The Shmueli Declaration also incorporates by reference his Declaration dated August 5, 2009 and submitted to the Court in support of a motion for an *ex parte* order of attachment in an action brought by a different plaintiff against Parlato and Whitestar, among others, Altissima Limited v. One Niagara LLC, 08-CV-756S.

Niagara LLC, 08-CV-756S, brought against several of the same defendants named here, including Parlato and Whitestar. Counsel states his understanding that Altissima has brought its own *ex parte* motion for an order of attachment, declares that IIL has a similar interest in attaching the same assets for essentially the same reasons, and requests that an order of attachment be granted in favor of IIL, as well. (Bloom Decl. ¶¶ 4-5.) Like Altissima, IIL seeks to prevent Parlato and Whitestar from transferring any interest in Whitestar or non-party One Niagara LLC,³ based on the belief that Parlato will abscond with proceeds of a transfer beyond this Court's jurisdiction. (*Id.* ¶¶ 6-10; Shmueli Altissima Decl. ¶¶ 4-6, 8; Marino-Weiler Aff. ¶ 4; Zenosky Aff. ¶ 5.)

4. Shmuel Shmueli, Executive Vice President of IIL, adopts his Altissima Declaration "in support of the application in this case insofar as it states the facts supporting the granting of an order of attachment." (Shmueli Decl. ¶ 4). The relevant facts, drawn from that declaration and a supplemental Shmueli declaration not incorporated here, are fully set forth in the Court's decision on Altissima's motion for an order of attachment. Familiarity with those facts is presumed and will not be repeated here. Other than specifically alleging claims for breach of fiduciary duties and the duty of loyalty by Parlato and Whitestar vis-a-vis Whitestar's membership in One Niagara LLC, which were alluded to by Altissima, IIL advances no independent ground for seeking an order of attachment.

5. Thus, for the reasons stated in the Altissima Decision and Order, IIL's Motions for an *Ex Parte* Order of Attachment and for an Expedited *Ex Parte* Hearing on its Motion for an *Ex Parte* Order of Attachment are denied.

³ This entity, of which IIL is a member, is a defendant in the Altissima case.

V. ORDERS

IT HEREBY IS ORDERED that Plaintiff Incredible Investments Limited's Motion for an Expedited *Ex Parte* Hearing on its Motion for an *Ex Parte* Order of Attachment is DENIED.

FURTHER that Plaintiff's Motion for an *Ex Parte* Order of Attachment is DENIED.

FURTHER that no later than September 11, 2009, Plaintiff shall file all papers submitted to the Court *ex parte* in support of its motions.

SO ORDERED.

Dated: August 31, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge